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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12
13 CITY OF SAN JOSE, a municipal corporation;
14 and BLACK ALLIANCE FOR JUST
15 IMMIGRATION, a California Non-Profit
Corporation,

16 Plaintiffs,

17 v.

18 WILBUR L. ROSS, JR., in his official capacity
19 as Secretary of the U.S. Department of
Commerce; et al.,

20 Defendants.

21 STATE OF CALIFORNIA by and through
22 Attorney General Xavier Becerra; et al.,

23 Plaintiffs,

24 v.

25 WILBUR L. ROSS, JR., in his official capacity
26 as Secretary of the U.S. Department of
Commerce; et al.,

27 Defendants.

28 Case No. 3:18-cv-02279

**JOINT STIPULATION AND
[PROPOSED] ORDER TO ADMIT
EVIDENCE IN LIEU OF TESTIMONY
FOR DR. LISA HANDLEY AND DR.
HERMANN HABERMANN**

Dept: 3
Judge: The Honorable Richard G.
Seeborg
Trial Date: January 7, 2019
Complaint Filed: April 17, 2018

Case No. 3:18-cv-01865

1 **JOINT STIPULATION REGARDING THE TRIAL TESTIMONY OF**
2 **DR. LISA HANDLEY AND DR. HERMANN HABERMANN**

3 To promote efficiency and preserve judicial resources, Plaintiffs and Plaintiff-in-
4 Intervention, (collectively, “Plaintiffs”) and Defendants (collectively, “Parties”) in the cases of
5 *San Jose et al. v. Ross et al.*, 18-cv-2279, and *California et al. v. Ross et al.*, 18-cv-1865 have
6 reached an agreement regarding the admission of evidence in lieu of trial testimony for certain
7 expert witnesses who testified in *State of New York, et al. v. United States Department of*
8 *Commerce, et al.*, case no. 1:18-cv-02921 (“New York matter”). The Parties hereby stipulate as
9 follows:

10 1. Defendants’ position is that, because the Administrative Procedure Act (APA)
11 provides the waiver of sovereign immunity and the basis for review of Plaintiffs’ claims,
12 including their constitutional claim, this Court should confine its merits review to the
13 administrative record. The testimony of Drs. Lisa Handley and Hermann Habermann go directly
14 to the merits of Plaintiffs’ claims and, as Defendants will state in an upcoming motion *in limine*,
15 should therefore be excluded. Should this Court deny Defendants’ motion *in limine* and include
16 extra-record evidence in its review on the merits, Defendants stipulate to the procedure set forth
17 below.

18 2. Should any of the Plaintiffs move to admit the testimony of Dr. Hermann Habermann,
19 the complete trial testimony of Dr. Habermann set forth in pages 453:17- 471:13 of the transcript
20 of trial proceedings on November 6, 2018 in the New York matter, including Dr. Habermann’s
21 trial affidavit filed in the New York matter as Doc. 498-11, may be moved into evidence during
22 trial in the above-captioned case(s).

23 3. Should any of the Plaintiffs move to admit the testimony of Dr. Lisa Handley, the
24 complete trial testimony of Dr. Handley set forth in pages 786:10-856:15 of the transcript of trial
25 proceedings on November 13, 2018 in the New York matter may be moved into evidence during
26 trial in the above-captioned case(s).

1 4. The following demonstratives used during the witnesses' direct examination in the
2 New York matter may be considered by the Court for the limited purpose of assisting the Court in
3 understanding Dr. Handley's trial testimony: PDX 31, PDX 32, PDX 33, PDX 34, PDX 35, PDX
4 36, PDX 37, PDX 38, PDX 39, PDX 40, PX 32, PX 332, PX 504, and PX 535.

5 5. Plaintiffs reserve the right to also seek to admit into evidence PX 331, PX 332, PX
6 504, and PX 535 for other purposes at trial. Defendants reserve the right to object to their
7 admission for other purposes at that time.

8 **IT IS SO STIPULATED.**

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1 Dated: December 18, 2018

MANATT, PHELPS & PHILLIPS, LLP

2 By: /s/ John F. Libby

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1 **FILER'S ATTESTATION**

2 Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, Ana G. Guardado hereby
3 attests that concurrence in the filing of this document has been obtained from all the signatories
4 above.

5 Dated: December 18, 2018

s/ Ana G. Guardado
6 Ana G. Guardado

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2018, I served the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

/s/ Ana G. Guardado
Ana G. Guardado

1 **[PROPOSED] ORDER**

2 Based on the parties' Stipulation to Admit Evidence in Lieu of Testimony for Dr. Lisa
3 Handley and Dr. Hermann Habermann, and good cause appearing, this Court finds the complete
4 trial testimony of Dr. Lisa Handley and Dr. Hermann Habermann, including Dr. Habermann's
5 trial affidavit, in *State of New York, et al. v. United States Department of Commerce, et al.*, case
6 no. 1:18-cv-02921 (the "New York matter"), may be moved into evidence during trial in the
7 above-captioned case(s) should any of the Plaintiffs move to admit such testimony and if the
8 Court rejects Defendants' motion *in limine* for exclusion of all extra-record evidence.

9 6. The Court may rely upon the following demonstratives used during trial in the New
10 York matter for the limited purpose of assisting the Court in understanding Dr. Handley's trial
11 testimony: PDX 31, PDX 32, PDX 33, PDX 34, PDX 35, PDX 36, PDX 37, PDX 38, PDX 39,
12 PDX 40, PX 32, PX 332, PX 504, and PX 535. Plaintiffs may also seek to admit into evidence
13 PX 331, PX 332, PX 504, and PX 535 for other purposes at trial and Defendants may object to
14 such admission at that time.

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16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

17 DATED: 12/18/18



18 HON. RICHARD SEEBOORG
19 United States District Court Judge

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